IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 9TH JANUARY 2007 / 19TH PAUSHA 1928

Crl.Rev.Pet.No. 128 of 2007(E)

CRA.199/2003 of ADDL. SESSIONS COURT, (ADHOC), PALAKKAD
ST.843/1999 of JUDL.MAGISTRATE OF FIRST CLASS COURT, MANNARKAD

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REVN. PETITIONER/APPELLANT/ACCUSED:

RAJAN, S/O.ACHU,
PADINHARATHIL,
KUMARANPUTHUR, MANNARKAD.

BY ADV. SRI.VINOD KUMAR.C

RESPONDENTS/COMPLAINANT & STATE:

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1. NATIONAL CHITS AND FINANCE CORPORATION,
MANNARKAD, REP.BY ITS MANAGING PARTNER,
P.N.MOHANDAS, S/O.P.K.NARAYANAN,
PUDAPPARIYARAM, PALAKKAD.

2. STATE OF KERALA,
REP.BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 09/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.R.P.No.128 of 2007

Dated this the 9th day of January 2007

O R D E R

This revision petition is directed against a concurrent verdict of guilty, conviction and sentence in a prosecution under Section 138 of the Negotiable Instruments Act.

2. The cheque is for an amount of Rs.13,500/- and bears the date 27/03/1999. The petitioner now faces a sentence of S.I for a period of one month and there is a direction to pay an amount of Rs.13,500/- as compensation. No default sentence is imposed.

3. The courts below concurrently came to the conclusion that the complainant has succeeded in establishing all the ingredients of the offence punishable under Section 138 of the N.I Act. Accordingly they proceeded to pass the impugned concurrent judgments.

4. Called upon to explain the nature of the challenge which the petitioner wants to mount against the impugned concurrent judgments, the learned counsel for the petitioner only prays that leniency may be shown on the question of

sentence. The petitioner may be granted some further time to make the payment, it is urged.

5. The verdict of guilty and conviction is not challenged. No interference with the verdict of guilty and conviction is in these circumstances necessary. Coming to the question of sentence, I have already adverted to the principles governing imposition of sentence in a prosecution under Section 138 of the N.I.Act in the decision reported in **Anilkumar vs.Shammi** [2002 (3)KLT 852]. In the facts and circumstances of the case, I find no compelling reasons which can persuade this court to insist on imposition of any deterrent substantive sentence of imprisonment. Leniency can be shown to the petitioner but subject only to the compulsion of adequately and fairly compensating the victim. The respondent is served. There is no appearance for the respondent.

6. In the result:

a) This revision petition is allowed in part.

b) The impugned verdict of guilty and conviction of the petitioner under Section 138 of the N.I.Act are upheld.

c) But the sentence imposed is modified and reduced. In

supersession of the sentence imposed on the petitioner by the courts below, he is sentenced to undergo imprisonment till rising of court. He is further directed under Section 357(3) Cr.P.C to pay an amount of Rs.14,500/- (Rupees fourteen thousand only) as compensation and in default, to undergo S.I for a period of three weeks. If realised, the entire amount shall be released to the complainant as compensation.

7. The petitioner shall have time till 28/2/2007 to appear before the learned Magistrate to serve the modified sentence hereby imposed. The impugned sentence shall not be executed till that date. If the petitioner does not appear before the learned Magistrate on or before that date, the learned Magistrate shall thereafter proceed to execute the modified sentence hereby imposed.

Hand over copy of this order to the learned counsel for the petitioner .

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006